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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re Z.W., a Person Coming Under the
Juvenile Court Law.

SAN FRANCISCO HUMAN SERVICES
AGENCY,

Plaintiff and Respondent,

v.

S.B.,

Defendant and Appellant.

A147566

(San Francisco County
Super. Ct. No. JD143009)

Appellant S.B. (Mother) appeals from an order dismissing dependency jurisdiction as to her daughter Z.W. after a nonrelated family member was appointed as legal guardian for the girl. Mother contends the juvenile court abused its discretion by dismissing dependency, alleging that exceptional circumstances involving her daughter require a “heightened need for judicial oversight.” We conclude termination of dependency jurisdiction was proper and affirm the order.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Original Petition and Detention

On January 8, 2014, the San Francisco Human Services Agency (Agency) filed a petition under Welfare and Institutions Code section 300¹ alleging that then 11-year-old

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.

Z.W. was at risk due to Mother's untreated alcohol abuse. The petition alleged that five days earlier Mother had been in a hit-and-run accident while driving with Z.W.'s three-year-old sister, who was seated in the back seat without a car seat or seat belt. Mother had hit a parked car then attempted to flee the scene on foot with the toddler. When arrested mother had a blood alcohol level of .27.

Protective Service Worker Christine Burns authored a detention report filed the same day. Burns reported that Mother was arrested in San Mateo County on charges of DUI and child endangerment. Child Protective Services (CPS) took custody of both girls, and Z.W. was later released to her nonrelative godmother, J.W. Mother reportedly had a long-standing history of alcohol abuse, with at least 13 prior referrals for abuse and neglect. She had recently received over six months of voluntary CPS services, which ended one week prior to the hit and run. Burns noted that Z.W. had not consistently resided in Mother's home, and had been cared for by J.W. on and off for the child's entire life. J.W. had allowed Z.W. to visit with Mother when the incident occurred.

After a detention hearing on January 9, 2014, the juvenile court found a prima facie case had been made that Z.W. came within section 300. She was detained and placed in the home of J.W.

Jurisdiction and Disposition

The Agency filed a disposition report on February 27, 2014. In addition to the foregoing information, Burns reported that she had spoken with Z.W.'s father, who stated that he had not had contact with the child since she was a toddler but had been providing child support and medical insurance coverage over the past several years pursuant to family court orders.

Burns also reported Mother had a prior voluntary case open with CPS for approximately eight months, which closed one week before her arrest.² Mother admitted

² Burns was also the worker on that case.

she had a problem with alcohol abuse, stating that her use of alcohol dated back to her teens. There also was severe domestic violence between Mother and D.W., the alleged father of Z.W.'s younger sister, including at least three incidents in which both girls witnessed Mother being "viciously assaulted" by D.W., with Mother sustaining injuries. Burns reported that Z.W. was also alleged to have been injured in one of these incidents when she tried to intervene.

Burns opined that Mother's poor parenting skills were the result of neglect and trauma Mother experienced in her own childhood. Mother's interactions with her daughters "evidenc[ed] a very limited knowledge of the appropriate developmental expectations of her 11 year old and 3 year old daughters." Her parenting style with the three-year-old was overly permissive, while she treated Z.W. as a friend rather than a daughter by disclosing inappropriate information regarding adult issues, causing Z.W. anxiety and stress.

Mother demonstrated some insight into her lack of parenting abilities by admitting that she lacked skills, while demonstrating a willingness to accept help. Mother recognized she could not provide appropriate care for Z.W. when the girl was an infant and so had made informal arrangements for the baby to be cared for by J.W. and J.W.'s daughter, M.W. Mother had attempted on a few occasions to care for Z.W. on her own, but always ended up returning her to J.W. The social worker noted that it would have been extremely detrimental to place Z.W. in foster care as she had been in J.W.'s care since birth.

Z.W. was reported to be in good physical health, but had significant symptoms of generalized anxiety that affected her ability to function at school. She was diagnosed with ADHD, but the source of her anxiety was reportedly the trauma of domestic violence she witnessed while visiting and living with her mother. Z.W. spent a great deal of time worrying about her mother and her little sister, so that her mother's chaotic lifestyle was a "constant trigger" for her anxiety. Burns supervised a visit between

Mother and Z.W. in which the child was so upset that she cried and became withdrawn. Burns and Mother then agreed that therapeutic visits would be appropriate. The Agency recommended that Mother be provided with reunification services, including participation in a substance abuse treatment program, therapy to address domestic violence and trauma, and therapeutic visitation with Z.W.

The Agency filed an interim review report on April 16, 2014, in advance of a settlement conference on jurisdiction and disposition. At the time of the report, Mother and Z.W. had had only two visits, both of which were supervised by Burns. The second visit had gone well because Burns had managed to keep it structured for positive interaction and Mother was able to be present and avoid discussion of negative incidents from the past. Burns wrote that Z.W. appeared to want contact with her mother but was conflicted about it, and would benefit from structured, guided interaction with her mother. A referral for therapeutic visitation was pending. Z.W. had been referred for mental health treatment, including therapy and medication evaluation. A family conference was held in which Mother stated that she wanted to reunify with her daughters, but that if she was not able to take custody she would agree to J.W. becoming Z.W.'s legal guardian.

On April 16, 2014, Mother submitted to the allegations and the juvenile court sustained an amended petition. J.W. was granted de facto parent status. Reunification services, including therapeutic visitation, were ordered.

Six-Month Review

The Agency filed a six-month review report on October 1, 2014. Mother had completed four months of residential treatment for substance abuse, and her youngest daughter had been returned to her care. Mother was working with the therapeutic visitation clinician to learn appropriate boundaries with Z.W., to address the effects on the child of the trauma and substance abuse, and to help the child manage her own

anxiety. Z.W. was reporting symptoms of severe anxiety, connecting them to intrusive traumatic memories of the physical abuse she witnessed.

J.W. had observed the child's symptoms early on and had arranged at her own cost for the girl to see a doctor to be assessed for medication prior to the dependency. Z.W. was receiving psychiatric care, including medication, and also received individual therapy once a week. She was having Saturday visits with her mother, as well as weekly therapeutic visitation. The therapeutic visitation was intended to help Mother focus on and acknowledge the impact that the trauma of the domestic violence had on her and her daughter. Mother was reported to have engaged appropriately in this service and to have demonstrated increased insight into how her destructive behavior had affected her children. The Agency recommended an additional six months of services because Mother was making great progress but was not yet ready to care for Z.W.

The Agency filed an addendum report on October 27, 2014, reporting that Mother had relapsed on alcohol at least once and had become involved with an abusive partner but had ended the relationship. The social worker was concerned that Mother was overwhelmed with meeting the conditions of her parole, juggling care for her youngest daughter with the need to find work to pay restitution, and needing to enroll in an outpatient substance abuse program.

Z.W. was reported to be struggling with symptoms of PTSD, which continued to affect her academic performance. She was receiving weekly tutoring, weekly therapy, and monthly psychiatric care, as well as the weekly therapeutic visitation with her mother. She had unsupervised weekend visits at her mother's house until it became apparent that the visits were stressful. After an incident in which Z.W. wrote to a friend that she wanted to die, Z.W. disclosed that she no longer wanted to visit at Mother's home. The weekend visits were terminated. While the therapeutic visits were productive for both Z.W. and her mother, Mother had missed four out of six sessions since September 1. Mother was reporting transportation issues, but Z.W. had been transported

twice to find out that Mother cancelled at the last minute, despite having been given transportation funds.

A mediation held on October 28, 2014, resulted in an agreement that, among other things, gave Mother unsupervised visits with Z.W. every other weekend. Mother was also required to confirm therapeutic visits by noon on the day of the visit in order to avoid unnecessary travel for Z.W., and to attend drug dependency court and weekly family team meetings.

Another addendum report filed on January 30, 2015, indicated that Mother had been consistently participating in the weekly therapeutic visitation. Z.W. had made some progress expressing her feelings, and Mother was improving in her ability to listen. Z.W.'s relationship with her mother also improved simply because she could now count on seeing Mother and her younger sister at the weekly sessions. Z.W. was receiving wraparound services at Marin Wellness Center that included case management, psychiatric care, and individual therapy.

12-Month Review

The Agency filed a 12-month review report on March 17, 2015, recommending that reunification services be terminated and the matter set for a section 366.26 hearing. Mother had moved to Oakland and was receiving transportation funds from the Agency to cover the costs of her twice-monthly weekend visits and weekly therapeutic visits with Z.W. The funds were also intended to defray Mother's costs of commuting to San Francisco for drug court and mental health services. Mother had been consistent in attending the weekly therapeutic visitation, which had helped both her and her daughter. In addition to visiting, Z.W. and her mother continued to speak on the phone. Z.W. continued to receive services at Marin Wellness Center. Mother told the social worker that she was willing to agree to a legal guardianship for Z.W. if she could be assured that she would continue to have ongoing contact after the dependency was dismissed.

After the six- and 12-month review hearings were combined and set for a later date, the Agency filed an addendum report on April 17, 2015, recommending that services continue until an 18-month review to be held in July of 2015. Mother and Z.W. continued to participate in weekly therapeutic visitation with a focus on learning to communicate. The sessions were to be moved to Mother's home in Oakland, "[i]n an effort to help the mother learn how to help Z.W. cope with her PTSD symptoms, with the goal of moving towards unsupervised visitation in the home"

The Agency filed an addendum review report on May 22, 2015. Mother had signed a waiver of reunification services after she and J.W. met together with the social workers and she agreed to legal guardianship for Z.W. with J.W. J.W. assured Mother that Mother would continue to have contact with Z.W. after the guardianship was put in place. Z.W. and her mother had begun holding therapeutic visitation sessions in Mother's home in Oakland. The weekly sessions were in addition to the twice-monthly unsupervised weekend day visits that mother scheduled directly with J.W.

At the review hearing on June 29, 2015, the court terminated reunification services and set the matter for a section 366.26 hearing.

On August 10, 2015, Burns filed an application regarding psychotropic medications, in which Z.W.'s psychiatrist recommended continuing to give her Ritalin for her ADHD, and eliminating her Wellbutrin because it was no longer deemed necessary. The application reported that Z.W. was "stable and doing well on [her] current regimen"

Section 366.26 Selection and Implementation Hearing

On October 13, 2015, the Agency filed its section 366.36 report. Burns wrote this report, as well as all of the other Agency reports in the case. The Agency recommended that KinGAP guardianship be approved as the permanent plan, that J.W. and her husband be appointed the KinGAP guardians, and that the petition be dismissed. Burns noted that J.W. and her husband had offered to be legal guardians at the start of the dependency.

Z.W. had resided with them for most of her life, and they made sure that all of her physical, emotional, and educational needs were met. They treated her like extended family and she appeared to be comfortable in their house. Z.W. herself stated that she wanted to continue living with J.W., while visiting her mother on weekends. She expressed that she feels part of the community in Marin, she has friends in school, and is involved in extracurricular activities. Moreover, she continued to receive individual therapy and psychiatric services in Marin.

Burns indicated that in addition to the therapeutic visitation taking place at Mother's home in Oakland, Z.W. now had unsupervised overnight visits in Mother's home twice a month. Burns noted that "[w]ith the help of the family therapist, the mother was able to demonstrate the skills and behavior needed to help [Z.W.] manage her anxiety enough that she is now able to stay overnight at her Mother's house on weekends." The Agency had been transporting Z.W. from San Rafael to Oakland for the therapeutic visitation, with J.W. dropping Z.W. off at the Richmond BART station, where Mother would pick up the child for the weekend visits. Mother would return Z.W. to San Rafael after the visits. The Agency had been providing transportation funding to Mother, and she was concerned that if the dependency was terminated and the Agency no longer provided funds she would have difficulty transporting Z.W. to San Rafael on a regular basis. Subsequently, the parties entered into a mediation agreement in which Z.W. would have weekend visits with her mother twice a month and would be dropped off *and* picked up at the Richmond BART station.

The selection and implementation hearing took place on February 10, 2016. Burns and Mother were the only witnesses.

Burns testified that Z.W. wanted to continue living with J.W., noting that the girl's relationship with her mother had continued to improve in family therapy. She also opined that the current living situation was ideal for Z.W. because J.W. both supported Z.W.'s relationship with her mother and was dedicated to providing a stable home for the

girl. When Burns was asked whether family therapy would continue if the guardianship were established, she related that the therapist had said “she could probably stretch it out for six months.”

On cross-examination, Mother’s counsel asked about an incident that occurred at J.W.’s home on Thanksgiving. Burns confirmed that an altercation had taken place while J.W.’s husband was under the influence of alcohol. Z.W. told Burns that the incident caused her to experience flashbacks and nightmares, but also confirmed that she still felt safe in J.W.’s home. The husband had since permanently moved out. On cross-examination by the guardian’s counsel, Burns testified that she had no safety concerns about Z.W. residing in J.W.’s home.

Mother testified that she wanted Z.W. to live with her full-time and that she felt her daughter would be better off in her home. She indicated that Z.W. had low self-esteem and had complained that she had trouble expressing herself to those around her. Mother stated that on the weekend before the hearing, Z.W. had had a “nervous breakdown” at Mother’s house, evidenced by screaming, rocking back and forth, and pulling her hair out.

In closing arguments, Mother’s counsel argued against dismissing the dependency, contending “the case should at least remain open so that the minor’s mental health can continue to be addressed and these incidents [as described by Mother] can be monitored by the agency.” All other parties argued for the legal guardianship to be instituted. After argument the court approved legal guardianship with J.W. as the permanent plan, adopted the mediation agreement on visitation as the court’s order, and terminated dependency jurisdiction. This appeal followed.

DISCUSSION

Section 366.3, subdivision (a), provides, in part, “Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court or may terminate its dependency jurisdiction and retain jurisdiction

over the child as a ward of the legal guardianship, as authorized by Section 366.4. If, however, a relative of the child³ is appointed the legal guardian of the child and the child has been placed with the relative for at least six months, the court shall, except if the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4.”⁴ Pursuant to this provision, dismissal of the dependency proceeding is mandatory following appointment, as here, of a relative legal guardian, absent objection by the guardian or a finding of exceptional circumstances. (*In re Grace C.* (2010) 190 Cal.App.4th 1470, 1475; § 366.3, subd. (a).) We review the order terminating dependency for abuse of discretion. (*In re Grace C.*, at p. 1476; *In re Twighla T.* (1992) 4 Cal.App.4th 799, 806.)

Mother claims “exceptional circumstances” exist here because Z.W.’s mental health has not sufficiently stabilized. She also argues that terminating the dependency means that the family therapy sessions will end and Mother will lose the financial assistance to help her travel to visits. Mother contends these issues create a heightened need for judicial oversight.⁵ We are not persuaded.

Mother’s argument regarding Z.W.’s mental health issues ignores much of the evidence in the record, including the wraparound services Z.W was receiving from Marin

³ Relative legal guardians include nonrelated extended family members such as J.W. (§§ 362.7; 11391, subd. (c).)

⁴ Section 366.4 provides that “[a]ny minor for whom a guardianship has been established resulting from the selection or implementation of a permanency plan pursuant to Section 366.26 . . . is within the jurisdiction of the juvenile court.”

⁵ Section 366.3 does not define “exceptional circumstances.” Because a primary difference between dependency and guardianship jurisdiction is the extent of oversight, it is suggested in *In re K.D.* (2004) 124 Cal.App.4th 1013, that exceptional circumstances exist where the circumstances of the parties create a heightened need for judicial oversight. (*Id.* at p. 1019.) There is no statutory basis, however, to restrict the term to this meaning.

Wellness Center and the extensive progress the child had already made in therapeutic visitation. Further, Burns indicated that these therapeutic visits would continue for another six months. While Mother testified that Z.W. had shown serious symptoms of emotional upset during a recent visit, it can reasonably be inferred that the child's distress will be addressed during future therapeutic visits.

Mother also overlooks that J.W. had sought psychological help for Z.W. even before the juvenile court ordered mental health treatment for the child. The aftermath of the Thanksgiving incident with J.W.'s husband demonstrates that J.W. was committed to maintaining a healthy home environment for Z.W. J.W. was Z.W.'s de facto parent, and her home is the home in which the child was raised and had resided for most of her life. Thus, it was reasonable for the court to conclude that J.W. would continue to facilitate the child's access to mental health treatment even without its continued oversight.

As to visitation, it was undisputed that J.W. was committed to making sure Z.W. maintains a relationship with Mother, and had agreed to deliver the child to Mother for weekend visits twice a month. If the juvenile court orders visitation, "it must also ensure that at least some visitation, at a minimum level determined by the court itself, will in fact occur." (*In re S.H.* (2003) 111 Cal.App.4th 310, 313.) Here, the visitation schedule was made a part of the court order. Under the mediated agreement with J.W., the parties agreed to exchange Z.W. at the Richmond BART station for visits every other weekend, obviating the need for Mother to transport the child back to San Rafael and thus minimizing Mother's financial burden. There is nothing in the record to support a need for heightened oversight with respect to visitation.

To the extent future issues arise, Mother will have the ability to draw them to the juvenile court's attention: "If dependency jurisdiction is terminated the court retains jurisdiction over the child as a ward of the court as authorized by section 366.4 [citation], but it no longer holds ongoing review hearings." (*In re K.D.*, *supra*, 124 Cal.App.4th 1013, 1019.) "In either situation, if a problem develops, the parent has access to the

juvenile court.” (*In re Kenneth S., Jr.* (2008) 169 Cal.App.4th 1353, 1358.) The juvenile court thus retains jurisdiction over children as guardianship wards, and a parent may petition the court for a change in order if problems occur. (*Ibid.*)

In sum, the record supports a finding that there are no exceptional circumstances as to prevent the termination of dependency jurisdiction in this case. We conclude the court did not abuse its discretion in terminating the dependency.

DISPOSITION

The order is affirmed.

DONDERO, J.

We concur:

HUMES, P. J.

BANKE, J.

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